

D619

. D4

9
41

NEUTRALITY

UNDER INTERNATIONAL LAW

AND

THE WILSONIAN HERESY

AMERICA OR CHINA

A Letter to Hiram Freeborn, U. S. A.

Note.—In answer to inquiries. Mr. Freeborn will be found living on any hill in New England (or plain in the West), he has also residences in Pennsylvania, Maryland and the South, a bungalow on the Pacific slope and a tent in Alaska; in addition, he can be reached at other places within the United States Post Office area.

D 619
D 4

A WORM WILL TURN.

“And if, when all the mischief’s done
You watch their dying squirms
And listen, ere their breath be run
You’ll hear them sigh:
Oh clumsy one!—and devil blame the worms.”
C. S. CALVERLY.

MARCH 31st, 1915.

HIRAM FREEBORN, ESQ.,
U. S. A.

DEAR HIRAM :—

Before answering your questions let me premise that you appear to be one of those “little men who rock the boat”; also that there seem to be so very many of you that the boat is likely to be rocked sufficiently to pitch out certain calm but stubborn and unversed pilots whose services having been engaged by a minority of the crew have resulted in the occasion for those very inquiries of yours to which it is a duty to reply.

You doubtless remember that old codger, years ago in the village, who was wont when local circumstances appeared to demand it, to shake his head and give forth some not inapposite sententious apothegm or another. One, which attracted favorable attention, seems again of value. It was simple and comprehensive. “Eddication without experiuns makes fools of menny.” As a nation we appear to be served by an educated but inexperienced pilot—at least he has said so in good round terms on more than one occasion—and this has had not unnatural results.

But to take up your questions:

There is, on considerate reflection, a certain unpleasant resemblance in the general attitude which we have latterly taken toward our international position and relations, to the position which has been the accompaniment of the decadence of China. The statement will doubtless be rejected at first blush as preposterous, but, upon that reflection thereon which I urge, there will arise a willingness to further consider the proposition: and further consideration will bring appreciation of resemblances and tendencies which might not at the outset have been apparent. The spirit of commercialism—mere commercialism, not world trade, and not aggression in the commercial field, but mere “commercialism”—has grown greatly and rapidly in this country. It is the concomitant of republican institutions under which, necessarily, there are no class distinctions wherefore relative position comes, more and more, to be measured by possession of material resources. All aspects of life come to be measured by the one standard. That evasive quality which develops most rapidly under feudalism—as with the nations of Continental Europe during and after the middle ages and Japan until recently—known as “a punctilious sense of honor”, tends to disappear. There follows not alone disinclination to material sacrifice for any ideal but gradual spread of the doctrine that any evil should be endured rather than that one should suffer the expense and trouble which may arise from what is characterized as a jealous resentment of any invasion of or encroachment upon one’s rights—national or individual. The spirit represented in the phrase “millions for defence and not one cent for

tribute" is gradually lost. The many advantageous aspects of the pursuit of gain, though pursued only under such conditions of tranquility, and no more, as it may suit the rapacity or desire of others to permit, enforce themselves first on the individual, then upon the mass. These tendencies are ever present to a commercial republic. Therefore it behooves that those in temporary authority at each given time therein should voice a higher ideal, to offset their effect and preserve a just balance. Has such been the case with us? Such has not been the case in China these several hundred years and for the reason that commercialism grew therein to the extent that whosoever her temporary rulers have been at any time, they have been of the commercial class in the sense of being merely commercially minded. The huge non-resistant bulk of China with its great, industrious population, through its adoption of the doctrines of non-resistance has therefore afforded but too easy and too tempting a prey to the cupidity of the whole world. Will such be the result here? Should the doctrines which have been advocated and followed during the past two years be continued in succeeding ones we might answer easily in the affirmative. Many have smiled at the humorous aspect of the sentiment embodied in the phrase, "Peace if we have to fight for it." But its true meaning:—that in this world as at present constituted, no "Peace" which has not been won by contest and is not prepared to be defended by force is a "Peace" which will continue or one which, in the end, will be worth having—should redeem the phrase from derision.

Note here that the only "peace" which exists in any country in the world to-day is actively main-

tained from day to day by a vast army of "Peace Officers", constables and policemen — trained, armed, authorized to kill and killing, daily—backed up in every country by the army as need may on occasion arise. How can it be otherwise—so long as man is human and while each new born generation must learn anew—except through the slow course of interminable years of improvement. Also how can it be otherwise as to the nations taken collectively than it is in each nation separately. No "peace" ever has existed nor for centuries will exist and be of enduring character where force has not been or will not be its foundation. Neither has any freedom—the basis of all "peace"—ever been won save through conflict and by strife. It is a part of the progress of evolution—slow but continuous—impossible of being hurried but readily retarded by unwise effort unsuitably to advance.

Nor do these statements import warlike views or inclinations. Very much to the contrary. All reasonable persons look confidently to the ultimate establishment of the United States of the World: to the maintaining by an International Police, not of Perpetual Peace—for the world is peopled with human beings—but of Perpetual General Order and to the reign of Universal International Justice. Most quickly to be attained by enforcing the doctrine of Mutual International Respect not by supinely submitting to aggression. Unfortunately the conduct, by the present administration, of our Foreign Department (misnamed the Department of State) for the past two years, when reviewed as a whole, is by no means encouraging to those so believing: to the true lovers of Peace. The life of no individual American citizen has been worth

defence, the property of no individual American citizen has been worth protection, the rights of no American citizen, as also the rights of America, as well in the present clash between foreign powers as in internecine strife in Mexico have neither been asserted rightly nor maintained stoutly. Incidentally the "Flag" (regarded among nations as typifying that nation of which it may be the emblem) has been insulted with impunity on more occasions and by more peoples during the past two years than I believe in any thirty years before.*

Speaking purely "commercially"—which appears to be the point of view from which the present administration regards all these questions—this will not "pay." Such course, persisted in, will cost more in money, more in lives, more in territory and more in all material resources within the next twenty years than will have been saved and this by an hundred thousand times over. With such a record behind us and if we continue to pursue such a course, what would happen to this country, to the Panama Canal, to the Philippines and incidentally to the Monroe Doctrine, as soon as Germany recuperated, in the—fortunately for us impossible—event of her prevailing in the present "German War." We have given Germany since the first of last August example after example of the amount of infringement upon our national and individual rights to which we are prepared to submit rather than by any possibility take a stand which would earn her displeasure and then maintain such stand. Why this has been so opinions differ. Some think

*NOTE: It is an open secret that we did not occupy Vera Cruz to avenge the "insult" to the flag, howsoever much some may so believe, but to stop the delivery of arms to Huerta by Germany.

it is because of a personal anxiety—vain hope—on the part of our chief executive to be *persona grata* to all the belligerents that the honor and dignity of being summoned as an arbiter of their destinies in some adjustment of their present difficulties may fall to his share. Some ascribe it to the personal views, as to what it deems a peaceful attitude, of the present administration, coupled with failure on its part to estimate the strength of existing limitations in the progress of the so-called civilized world towards actual civilization. Others of whom I confess I am inclined to be one, ascribe it to an acute misconception of the scope, extent and meaning of the doctrine and rules of “Neutrality” in international law on the part of those entrusted with the ultimate responsibilities for our “International” relations—to the wholly erroneous view that “Neutrality” means “being impartial”—a comprehensive fundamental error usually made by those unexperienced in affairs.

This error, now shared by the public, entertained by this extraordinary administration of ours, grew out of the equally erroneous belief that “Neutrality” is largely a matter having relation to the individual citizens of this Republic in their capacity as such. The impression would appear to have been created by or to be to a great extent the result of the phrasing of the Proclamations issued upon that subject at the outbreak of the present German War, and the expressions used since in communications and addresses. From it, in practice inconveniences arise. It hardly seems that it should be necessary to point out how erroneous, are such views. A moment’s consideration indicates that it is the “neutrality” of the United States not the “neutrality” of the individual citi-

zens thereof which is contemplated by and embraced within the term "Neutrality". Unfortunately the administration has been so concerned in the question of the neutrality of private citizens that it has on occasion forgotten or overlooked distinct infringements of its own "Neutrality" which have occurred.

A second proposition, in a sense a corollary of the foregoing, is also almost wholly disregarded, to wit: that so far as private citizens are concerned, neutrality as to them means, or if you choose consists, in their protection in and the opportunity to exercise certain "*rights*". But this has been translated in the public mind into its antithesis, to wit: that endless "*duties*" are cast upon them and upon the country. It is somewhat difficult to see just where the private citizen can as to a belligerent nation produce an infraction of our "Neutrality"—he could, though with difficulty, as to *us*—but hardly as to a foreign Government. That is, he could pursue a course of conduct which would render it proper that we should restrain or punish him—lest because of our not disavowing and punishing, it might be thought that we officially participated therein—but that would be difficult. His worst efforts would probably constitute crimes, but in only a possible few cases could they be breaches of the "Neutrality" of the United States. The German-American meeting at Washington, for example, was of seditious and treasonable tendencies, but was not an infraction of the "Neutrality" of the United States. On the other hand, our "Neutrality" can be—has been in this "German War"—infringed upon by individuals, subjects of the belligerent powers.

The true aspect of the question and the distinction between the two cases appears to have occurred to the administration only very recently—if even now. Take a clear example. Had a citizen blown up a boundary bridge it would have been merely a personal crime on his part, but the doing so by a subject of one of the belligerents was an infraction of our “Neutrality”. The (quite foolish) fellow who did it indicated his entire misapprehension of the situation by announcing that he claimed protection on the ground that it was “an act of war”—the very thing which constituted it an infraction of our Neutrality and rendered it fit that he be instantly surrendered without more ado. He claimed that he had used the territory of this neutral nation as a base for warlike operations. Had he searched the books for an unfortunate ground on which to rest his plea he could have found no worse an one.

The administration does not understand this and allows him to be dragged round the country and tried for a lot of minor crimes—just as though he were a citizen—I suppose if he were a citizen the poor dear geese would surrender him to prove their neutrality—reason staggers before such reversals of comprehension!

Nor let it be imagined that that—which through our misapprehension of “Neutrality”—has occurred in the way of the establishment of unfortunate international precedent and of our incurring responsibilities during the “German War” will vanish with its termination. For such errors in diplomacy or international law as we have made or may make a day of reckoning will come. It can hardly be hoped that in the future the nations of the world will be willing to allow us to assume the position

that the diplomatic history of the United States so far as written during the period of the "German War" is to be regarded as episodic and as neither constituting precedent nor creating liability. I sometimes wonder whether there is an appreciation in the State Department to-day of the fact that we have deliberately re-instated to our own detriment the *mare clausum* doctrine. I can imagine English statesmen in the coming years reading with a smile the phrase in our man Halleck, where he says:

"No one would think now of reviving the
 "controversy which once occupied the pens
 "of the ablest European jurists with respect
 "to the right of any one State to appropriate
 "to its own use and to the exclusion of
 "others, any part of the open sea or ocean
 "beyond the immediate vicinity of its own
 "coast."

Do not be alarmed, Hiram, the controversy has not been revived: for we cheerfully acquiesced in the upsetting and reversal of the long contended for and finally established doctrine of *mare liberum*—and this as the logical sequence of our failure to act at the one appropriate moment lest we offend Germany. We should be impartial forsooth, and let them all break all the rules they will—burn, murder, ravish and pillage indiscriminately lest we be thought to be "partial" first to one side then to the other. Then, when as the result of rule breaking cherished doctrines go—forsooth they must—lest we be not "impartial".

The history of the re-instatement of the *mare clausum* doctrine is painfully simple. We took no efficient action when England closed the North Sea.

This for the very simple reason that having committed ourselves we could not.

Germany planted mines in the high sea. Our fatal present doctrines—call them what you will: Non-interference, Mistaken Understanding of what Neutrality Consists in, Watchful Waiting, Impartiality, or such other fantastic name as you may apply, or, as some say our desire to curry favor with each belligerent in turn by pretending that we are “friendly” to it—closed our mouths at the moment when vigorous action was demanded by every instinct which should prevail on such occasion and by the rules of Neutrality and International Law.

England, under the doctrine of reprisal, retaliated. She planted mines in delimited areas of the high sea. Again we took no efficient action—we had taken our fatal position of acquiescence in infringement of our neutral rights. Germany undertook reprisal in her turn. She strewed floating mines, of a character and under circumstances in contravention of rule, in the high sea. Again we took no efficient action. As a forced reprisal and at the same time a safeguard, as well to neutrals as for her own vessels, England declared the North Sea closed. We, as said above, took no efficient action. In other words, having closed our own mouths at the outset, having embarked upon a fundamentally erroneous course, we could nowhere thereafter find a point at which we could emerge from the false situation in which we had voluntarily placed ourselves.

It took some hundreds of years to do away with the doctrine of *mare clausum* and substitute the doctrine of *mare liberum*. It took about as many

weeks to reverse the process. It would be hard to say whether we gave away the hard earned rights in the doctrine of *mare liberum* of all maritime and commercial countries unwittingly: whether we recognized the doctrine of *mare clausum* in ignorance of the fact of any such claim being open to question: or whether it is but another instance in the conduct of our public affairs of that which I have called our gradual assimilation of attitude to the attitude of China in the conduct of her international relations. If it be the latter be assured it will have similar result. But, through whatever unfortunate condition it occurred, it is to be deplored.

The neutral nations have looked to us to defend not alone our, but *all* neutral rights—how have those rights fared at our hands? Where has there been recognition of the duty to safeguard even our own future position. Much less the rights of “Neutrals” at large. It is true that an amazing aggression in every direction has characterized the actions of Germany from the outset and equally true that the resort to these devices of despair are more than liable to fail: but the precedents we have created by our supineness will remain, they will not vanish with the disappearance of the aggressor’s power to do wrong. Another nation at another time will claim to do of rightful precedent that which Germany has done as the natural outcome of infernal teachings by her military despots and their adherents. When that time comes we shall be forced to do battle for our rights where had we had wise and foreseeing responsible leadership at this critical period no one would for a moment attempt to employ such reactionary measures.

If I have spoken of our not "protesting" bear in mind that it was not meant that action should be limited to protest if that were found unavailing. China has even more than ability in preparing well drawn protests and likewise ever been willing to limit effort by that bound. So indeed latterly have we. Let our manly protest at the "War Zone" decree and our humble acquiescence thereafter when we found that Germany really meant it, speak for us in witness thereof. As Lowell said our merit is proved by the dust on our knees.

There is however, in spite of what I have said, one individual citizen of the United States who can by his private act if not commit an infraction of the Neutrality of the United States at least most greatly tend that way and this because of his representative character. I refer to the Chief Executive. If he should for example (as it has been stated in the public prints, undoubtedly quite erroneously, he would) attend the meeting on the 21st of May of the four hundred German Musical Societies of America and participate in singing those songs, patriotic from the German, unpatriotic from the American, point of view which will doubtless grace that occasion, it might be regarded as a distinctly unfriendly act—even though excusable in American eyes as a vote-getting device. I instance this preposterous report merely for the sake of contrast with the forbidding of the singing in our Navy of "Tipperary"—less it be regarded as or tend toward a breach of Neutrality. Such matters as these in fact have no relation to Neutrality nor to "Neutral Rights."

As I have said Neutrality consists principally of neutral Rights scarcely at all of neutral Duties.

But such neutral duties as are involved in the meaning of the word are firmly precise and it is worth consideration how we have or have not complied with them while wasting our thoughts and energy on those absurd matters, which have relation merely to expression of personal opinion. First and foremost it should be said that in the last two weeks there has been an awakening in Washington as to Neutral Duties after eight months of war. The *Odenwald* probably much to her amazement was actually fired upon to prevent *her* committing an infraction of *our* Neutrality, but the *Kronprinz Wilhelm* is still at sea where she proceeded with the capacity of constituting herself a commerce destroyer and where she has been largely maintained as such through what appears to have been a supine neglect of one of our primary Neutral Duties. I wonder if it has occurred to the mind of the administration that there may be the making of an "Alabama Case" in this when the European War is over. Again it is generally understood and believed that the Good Hope was sunk with the aid of American coal. It may be, indeed perhaps it should be, that we may find our excuse in the suddenness of the arising of the conflict, in the preparedness and thoroughness of the German plans, as opposed to our own entire lack of preparation to comply with our Neutral Duties and the utter ignorance of the minor officials at various ports of what those duties consisted in. At best that will be a begging off. Had the promulgations of neutrality instead of taking the tone of warning each individual citizen not to have a private opinion, nor to express it, contained a warning to all the subordinate officers of the United States to

immediately make themselves conversant with the duties which had suddenly arisen, and to see to their prompt performance—in other words had there been the faintest conception of what “Neutrality” means there might have been no need for excuses of the nature indicated. Meanwhile attention seems to have been directed in other and quite absurd directions. A banker for example was warned not to participate in making loans to a friendly power lest it should involve a breach of the Neutrality of the United States, because that friendly power happened to be at war! A most astounding proposition. By what process of reasoning the supply of money to a belligerent by an individual citizen should be an infraction of our Neutrality when supplying unlimited arms, ammunition and war equipment of all kinds to any and all belligerents should not be so, it were difficult to say.*

It is well that there should be an understanding in the public's mind of this question of neutrality; and when authoritative statements upon which the public ought to be able to rely are made by what should be the source of authority and are meanwhile founded upon a total misconception it is regrettable.

One further proof of the entertaining by this administration of the erroneous idea that impartiality

*It was so funny that it aroused a curious interest to ascertain whence the abysmal error arose. There was no difficulty in ascertaining: a hasty turning of pages showed a most authoritative writer stating that loans by a neutral state to a belligerent were obnoxious to rule. The poor, innocent, deluded dears had either overlooked the word “state” in the text book or had omitted to turn over a couple of pages and note that no objection exists in the case of a citizen. But such an error is monstrous! It is incredible! It passes the bounds of belief!

and a desire to bring about peace are of the essence of "neutrality," is afforded—to place the most charitable construction on very puzzling if not extremely questionable acts—by the fact of the employing secret agents outside of the diplomatic representatives of the government with the belligerents—personal representatives of the Monarch one must assume. It is generally known that almost since the Mexican troubles began such an one has been with Villa and the activities of Mr. House first in London, now in Berlin are notorious. This is another way not to earn either the respect or the esteem of the belligerents or of the neutral nations. One of the most persistent demands of those who desire Peace has been for open diplomacy as its great safeguard. But we, have given the world a startling example of the discredited Jesuitical methods against which the best thought of the world has been contending in these matters. The results have been as might be expected in Mexico—language fails with which to characterize conditions there—and it is a more than safe prediction to say that it will tend to erroneously encourage Germany to contend after reasonable hope should be abandoned. The employment of such measures is most earnestly to be deprecated. Any peace resulting therefrom—fortunately impossible—would be a mere breathing spell to prepare for new slaughter, meanwhile the false hope engendered will but amplify the present slaughter. It is an *ignis fatuus* which our Chief Executive follows—a remnant of that scholastic training which, he says, has constituted his only experience. What it leads to on our part is equally unfortunate: with the impossible present hope, we are led to waive our

position as to our neutral rights lest we offend those whom we wish to influence to listen to our unauthorized, unaccredited and, frankly speaking, improper whisperings. The net result is that the just rights of our own people and of all other neutral nations are deliberately sacrificed in the mistaken hope of accomplishing what is wrongly thought to be a good end. All human experience is against the utility of such procedure. Two of our vessels are blown up by illegal mines—we roar as gently as any sucking dove. A commerce raider illegally sinks another of our ships—we entertain the commander of the sea-raider at the launching of one of our war vessels, coal him and repair him and give him opportunity to go to sea *before* we learn what reparation, if any, will be made. Our passports are forged. Our territory used as base of war—but why continue: where there is striving for an improper end by indefensible means the maze of irregularities which result is familiar to all. If it be all for vote-getting, let us hope it will fail. If it is with a view to personal glory, it surely will fail. If it be honest error arising from inexperience let us hope, my dear Hiram, that it will cease now that time for reflection on the great loss, not alone to the prestige of the country but to the future fame of the individual, has been afforded by the present duration of the German War. If that reflection should not bring complete change of point of view then let us hope that you will “rock the boat” to some purpose.

Yours very truly,

CHAS. STEWART DAVISON.

. D4

LIBRARY OF CONGRESS



0 020 914 038 A